

JUN 30 2009

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FEDERAL ELECTION COMMISSION
999 E. Street, N.W.
Washington, D.C. 20463

CELA

FIRST GENERAL COUNSEL'S REPORT

MUR: 6136
DATE COMPLAINT FILED: 11/24/08
DATE OF NOTIFICATION: 12/2/08
LAST RESPONSE RECEIVED: 1/9/09
DATE ACTIVATED: 4/1/09

EXPIRATION OF SOL: 9/12/13 – 9/14/13

COMPLAINANT:

Stacey Cargill

RESPONDENTS:

Steve Scheffler
Iowa Christian Alliance

RELEVANT STATUTES AND
REGULATIONS:

2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 441b(a) and (b)(2)
2 U.S.C. § 441d
11 C.F.R. § 100.16
11 C.F.R. § 100.22
11 C.F.R. § 100.26
11 C.F.R. § 110.11(a)
11 C.F.R. § 114

INTERNAL REPORTS CHECKED:

FEC Database

FEDERAL AGENCIES CHECKED:

Internal Revenue Service

I. INTRODUCTION

This matter arises from a complaint alleging that Steve Scheffler, the President of the Iowa Christian Alliance, and the Iowa Christian Alliance ("the ICA") violated campaign finance laws and possibly jeopardized the ICA's tax-exempt status by endorsing Senator John McCain for president and U.S. Senate candidate Christopher

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1 Reed in the 2008 general election.¹ In support of these allegations, the complaint attaches
2 a copy of an ICA e-mail newsletter containing the alleged endorsement of Senator
3 McCain from an article written by ICA lobbyist Norm Pawlewski. In addition, the
4 complaint submits a copy of an e-mail invitation to a fundraiser, co-hosted by Scheffler,
5 to benefit candidate Reed. The ICA and Mr. Scheffler responded that "it is not entirely
6 clear what the alleged violation was," but they deny that they have violated the Federal
7 Election Campaign Act of 1971, as amended ("the Act").

8 There is insufficient evidence to support a finding that the respondents violated
9 the Act in connection with the activities outlined in the complaint. The complaint's
10 allegations lack detail and, in some instances, even if true, do not establish a violation of
11 the Act. Therefore, we recommend that the Commission dismiss the allegation pertaining
12 to the e-mail newsletter, except to find no reason to believe that the e-mail newsletter
13 required a disclaimer; find no reason to believe as to the allegation relating to the e-mail
14 invitation; and close the file.

15 **II. FACTUAL BACKGROUND**

16 The ICA is registered as a non-profit corporation with the Iowa Secretary of
17 State's Office.² http://www.sos.state.ia.us/Search/corp/corp_summary. It is not
18 registered with the Commission as a political committee. Steve Scheffler is the current
19 president of the ICA and also a member of the organization's Board of Directors.
20

¹ The issue of whether the ICA is jeopardizing its tax exempt status is apparently moot. While the ICA may have had Internal Revenue Service ("IRS") section 501(c)(4) tax exempt status in the past, see MUR 5972 (Iowa Christian Alliance), the IRS states that ICA is not currently registered as a tax-exempt organization or a 527 Political Organization.

² The ICA is registered as a non-profit corporation pursuant to Chapter 504, the Revised Iowa NonProfit Corporation Act. Corporations may organize under this chapter for any lawful purpose not for pecuniary profit.

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1 <http://www.iowachristian.com/contacts>. The available information indicates that the ICA
2 retains a state lobbyist, Norman Pawlewski. *Id.* According to the Iowa Legislature, Mr.
3 Pawlewski is registered to lobby exclusively with Iowa's House of Representatives and
4 Senate. <http://www.coolice.legis.state.ia.us>. Mr. Pawlewski is not an officer or member
5 of the ICA's Board of Directors. <http://www.iowachristian.com/contacts>. According to
6 its website, the ICA, which is not affiliated with any political party, provides visitors with
7 regular updates regarding the Iowa state legislature, guest columns, links to news articles
8 on a variety of subjects, political party platform information, generic voter information,
9 as well as talking points on issues such as abortion, the economy, education, gambling,
10 and security. <http://www.iowachristian.com>.

11 The ICA website has available for download copies of its voter guides for the
12 2008 Presidential Caucuses as well as general election voter guides for state and federal
13 races, including the 2008 presidential race.³ <http://www.iowachristian.com>. The website
14 also includes a statement that the ICA is prohibited as a non-profit organization from
15 endorsing federal candidates, including any candidates in the 2008 presidential election.
16 <http://www.iowachristian.com/news/html>; *see also* Complaint at Exhibit 2. This
17 statement also indicates that the ICA Board of Directors voted to prohibit the ICA's
18 officers from endorsing candidates, but the remaining members of the ICA's Board of

³ The website includes a statement by the ICA's counsel stating that the organization's 2008 Presidential Voter Guide complied with 11 C.F.R. § 114.4(c)(5). Briefly, this statement indicates that the ICA did not prepare or distribute its voter guide in concert with any candidate or political committee and no portion of the voter guide expressly advocated the election or defeat of one or more clearly identified candidates. <http://www.iowachristian.com>. The ICA participated in a number of federally-related activities during the 2008 election, including co-hosting presidential candidate forums and distributing voter guides to hundreds of churches across the state prior to the January 2008 caucuses. Jonathan Martin, *Iowa Christian Alliance Leader Wields Power in Caucuses*, POLITICO, March 1, 2007.

1 Directors were allowed to endorse candidates personally and not on behalf of the
2 organization. *Id.*

3 The complaint generally alleges that the ICA and Mr. Scheffler "violated
4 campaign finance laws" and possibly jeopardized the ICA's tax-exempt status by
5 endorsing presidential candidate John McCain and U.S. Senate candidate Christopher
6 Reed in the 2008 general election. In support of her allegations, the complainant
7 provided three documents: a copy of an ICA e-mail newsletter ("e-newsletter"), dated
8 September 12, 2008; the ICA's statement regarding its policy on endorsements; and a
9 copy of an e-mail invitation to a fundraising event benefiting U.S. Senate candidate
10 Christopher Reed. Complaint at Exhibits 1, 2, and 3. While the ICA statement is
11 publicly available through the ICA website, it is unclear how the complainant obtained
12 copies of the other two documents as she does not appear to be listed as an original
13 recipient of either e-mail.

14 The e-newsletter, which was apparently issued to individuals who were "part of
15 the ICA Email Network," contains an article/guest editorial by Mr. Pawlewski and a
16 second section informing readers that the ICA voter guides were available for immediate
17 order. Complaint at Exhibit 1. In his article, entitled "Why Do the Heathen Rage," Mr.
18 Pawlewski outlines his reasons for supporting the McCain-Palin ticket and states that he
19 "can now, with confidence, vote for McCain-Palin" and "will do whatever I can to see
20 the McCain-Palin ticket in the victory lane this November." *Id.* Mr. Pawlewski also
21 criticizes presidential candidate Barack Obama, stating that "he had no resume worthy of
22 the presidency of this great nation." *Id.* The article concludes with a WALL STREET
23 JOURNAL article discussing Governor Palin's experience as Alaska's chief executive. *Id.*

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1 The complaint also includes an e-mail invitation, dated September 14, 2008, to a
2 "Pro-Life Reception and Fundraiser" in support of U.S. Senate candidate Christopher
3 Reed. Complaint at Exhibit 3. The invitation, which contained the subject line
4 "Invitation – Meet Reed running against Sen. Harkin," was sent by Iowa Right to Life
5 President Kim Lehman. *Id.* According to the invitation, the event was co-hosted by
6 "Steve Scheffler, Kim Lehman and Iowa Right to Life Federal PAC." *Id.* Mr.
7 Scheffler's association with the ICA is not mentioned in the solicitation. The ICA is not
8 listed anywhere on the invitation as a host, sponsor, or guest.

9 The respondents deny that they violated the Act and note that the complaint does
10 not detail which sections of the Act they are supposed to have violated. According to the
11 response, the guest editorial carried in the September 12th e-newsletter was intended only
12 to set out Mr. Pawlewski's personal opinions. The respondents contend that the ICA did
13 not have anything to do with issuing the invitation to the Reed fundraiser and asserts that
14 the complainant does not present any evidence that the organization had any involvement
15 with the event. The response also notes that Mr. Scheffler was involved in the fundraiser
16 in his personal capacity and not as president of the ICA. According to the response, Mr.
17 Scheffler's lending his name to the invitation was not in violation of "the Board's policy"
18 regarding endorsing candidates for public office, but even if it was, it is an internal matter
19 and not a violation of the Act.

20 **III. LEGAL ANALYSIS**

21 **A. The Allegation that the ICA Endorsed Candidate John McCain In**
22 **The E-Newsletter Should Be Dismissed**

23 The complaint does not specify which sections of the Act the ICA and Mr.
24 Scheffler violated. Nevertheless, the complaint appears to allege that this respondent
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1 nonprofit corporation and its president violated the Act by advocating the election of
2 Presidential candidate John McCain via an ICA-sponsored e-newsletter. As explained
3 below, we recommend that the Commission dismiss the allegation based on the
4 insufficiency of the information and the *de minimis* nature of the communication.

5 It is unlawful for a corporation to make a contribution or expenditure from its
6 general treasury funds to any candidate, campaign committee, or political party in
7 connection with any election to federal office.⁴ See 2 U.S.C. § 441b(a). In addition, any
8 officer or director of any corporation is prohibited from consenting to such contributions
9 or expenditures. *Id.* This prohibition includes making independent expenditures, which
10 are expenditures that expressly advocating the election or defeat of a clearly identified
11 candidate and that are "not made in concert or cooperation with or at the request or
12 suggestion of such candidate, the candidate's authorized political committee, or their
13 agents, or a political party committee or its agents."⁵ 2 U.S.C. § 431(17)(A), (B); 11
14 C.F.R. § 100.16.

15 However, the general prohibition against corporate contributions and expenditures
16 contains an exception that permits a corporation, including an incorporated membership
17 organization, to communicate with its "restricted class," but not the general public, on

⁴ For purposes of Section 441b, a "contribution" includes "any direct or indirect payment, distribution, loan, advance, deposit, gift of money, or any services, or anything of value" made to a candidate, including all in-kind contributions. 2 U.S.C. § 441b(b)(2) and 11 C.F.R. § 114.1(a)(1). The term "expenditure" is defined to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing an election for Federal office." See 2 U.S.C. § 431(9)(A)(i).

⁵ Independent expenditures made by persons, other than political committees, in an aggregate amount or value in excess of \$250 during a calendar year must be reported to the Commission. See 2 U.S.C. §§ 431(17) and 434(c). A person who makes an independent expenditure aggregating \$10,000 or more at any time up to the twentieth day before the date of an election is required to file a report describing the expenditure with the Commission within 48 hours. 2 U.S.C. § 434(g)(2)(A); 11 C.F.R. § 109.10(c).

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1 "any subject," including messages containing express advocacy of the election or defeat
2 of federal candidates.⁶ 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(a)(2)(i) and
3 114.3(a). A corporation's restricted class includes its stockholders, executive or
4 administrative personnel, and their families. 11 C.F.R. § 114.1(j). In the case of an
5 incorporated membership organization, its restricted class includes its members and
6 executive or administrative personnel, and their families. *Id.* We lack sufficient
7 information to determine whether the ICA qualifies as an incorporated membership
8 organization.

9 Under the Commission's regulations, a communication contains express advocacy
10 when it uses phrases, campaign slogan(s), or individual word(s), which in context have
11 no other reasonable meaning than to urge the election or defeat of one or more clearly
12 identified candidate, such as posters, bumper stickers, or advertisements, etc., which say
13 "Nixon's the One," "Carter 76," "Reagan/Bush," or "Mondale!" See 11 C.F.R.
14 § 100.22(a). The Commission's regulations also provide that a communication will be
15 considered express advocacy if it contains an "electoral portion" that is "unmistakable,
16 unambiguous, and suggestive of only one meaning" and about which "reasonable minds
17 could not differ as to whether it encourages actions to elect or defeat" a candidate when
18 taken as a whole and with limited reference to external events, such as the proximity to
19 the election. 11 C.F.R. § 100.22(b). In the *Explanation and Justification* for section
20 100.22, the Commission stated that "communications discussing or commenting on a

⁶ A membership organization is defined in part as a "trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization" that: (i) is composed of members, some or all of whom are vested with the power to operate or administer the organization, pursuant to the organization's articles or bylaws; (ii) expressly provides for 'members' in its articles and bylaws; (iv) expressly solicits members; (v) expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list; and (vi) is not organized primarily for the purpose of influencing a federal election. 11 C.F.R. § 114.1(e)(1)(i), (ii), (iv), (v), and (vi).

1 candidate's character, qualifications, or accomplishments are considered express
2 advocacy under new section 100.22(b) if, in context, they have no other reasonable
3 meaning than to encourage actions to elect or defeat the candidate in question." See 60
4 Fed. Reg. 35292 (July 6, 1995).

5 Despite the ICA's published statement that it does not endorse federal candidates,
6 the ICA's e-newsletter, dated September 23, 2008, expressly advocates the election of
7 John McCain because it contains such phrases as "I can now, with confidence, vote for
8 McCain-Palin;" "I will do whatever I can to see the McCain-Palin ticket in the victory
9 lane this November;" and "[Barack Obama] had no resume worthy of the presidency of
10 this great nation." See *supra* at 4; 11 C.F.R. § 100.22(a) and (b). Thus, the e-newsletter
11 contains "campaign slogans or words that in context have no other reasonable meaning
12 than to urge the election or defeat of one or more clearly identified candidates."
13 11 C.F.R. § 100.22(a). It also appears that the e-newsletter contains express advocacy
14 within the meaning of 11 C.F.R. § 100.22(b) because reasonable minds could not differ
15 as to whether the article encourages actions to elect or defeat a candidate when taken as a
16 whole and with limited reference to external events, such as the proximity to the general
17 election. Accordingly, the ICA's e-newsletter appears to be a corporate expenditure.

18 We have no information regarding what costs, if any, the ICA incurred in putting
19 together and issuing the e-newsletter, and it is likely they were *de minimis*. As the
20 Commission noted in its *Explanation and Justification* relating to Internet
21 Communications, "there is virtually no cost associated with sending e-mail
22 communications, even thousands of e-mails to thousands of recipients..." See 71 Fed.
23 Reg. 18589, 18596 (April 12, 2006). In any event, the costs associated with the ICA's e-

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1 newsletter may actually be excepted from the definition of expenditure if the newsletter's
2 distribution was limited to the organization's restricted class. However, it is impossible
3 to conclude based on the available information whether the ICA sent its e-newsletters
4 only to members of its restricted class or whether recipients included members of the
5 general public.⁷ The e-newsletter itself indicates only that it was sent to the "ICA Email
6 Network."⁸ See Complaint at Exhibit 1.

7 In view of the insufficiency of the information and the *de minimis* amount
8 involved, we believe that the Commission should exercise its prosecutorial discretion and
9 dismiss the allegation that the ICA and Steven Scheffler violated the Act with respect to
10 the e-newsletter, dated September 12, 2008. See *Heckler v. Chaney*, 470 U.S. 821
11 (1985).

12 **B. The ICA's E-Newsletter Did Not Require A Disclaimer Notice**

13
14 Whenever a person makes a disbursement for the purpose of financing a "public
15 communication" that expressly advocates the election or defeat of a clearly identified
16 candidate or solicits contributions, such communication must clearly state the name and
17 identifying information of the person who paid for it. 2 U.S.C. § 441d(a)(3); 11 C.F.R.
18 § 110.11(a). A public communication includes any broadcast, cable or satellite
19 communication, telephone bank, mass mailing, or general public political advertising.
20 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. A public communication does not include

⁷ In the closing letter, we intend to remind the ICA that distribution of communications containing express advocacy should be limited to individuals within its restricted class. 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. § 114.1(a)(2)(i) and 114.3(a).

⁸ We do not know who was part of the "ICA Email Network." It does not appear that the general public is able to access the ICA's e-newsletter or sign up to receive the e-newsletter on its publicly accessible website. That being said, the Commission's regulations permit a corporation to publicly announce its endorsement of a candidate so long as disbursements for the public announcement remain *de minimis*. 11 C.F.R. § 114.4(c)(6).

1 communications over the Internet, except for communications placed for a fee on another
2 person's Website. 11 C.F.R. § 100.26.

3 In this matter the ICA's newsletter did not require a disclaimer because it was
4 communicated via e-mail, which is not a public communication. 11 C.F.R. § 100.26.

5 Therefore, we recommend that the Commission find no reason to believe that the ICA
6 violated 2 U.S.C. § 441d.

7 **C. Mr. Scheffler's Involvement with the E-Mail Solicitation Did Not**
8 **Violate the Act**

9
10 The complaint also alleges that the respondents violated the Act by advocating the
11 election of U.S. Senate candidate Christopher Reed in connection with a fundraising
12 event for the candidate. There is no information to suggest that Steve Scheffler's co-
13 hosting a fundraiser in support of U.S. Senate candidate Christopher Reed constituted a
14 violation of the Act by him or the ICA. It is clear from the face of the invitation that Mr.
15 Scheffler was involved in the event as an individual and not as the ICA's president or a
16 member of its Board of Directors. The ICA's name does not appear anywhere on the
17 invitation, and the complainant presents no evidence that the organization was otherwise
18 involved in the event. Because there is no information demonstrating that Mr. Scheffler
19 or the ICA violated any provision of the Act in connection with this fundraising event, we
20 recommend that the Commission find no reason to believe that Steve Scheffler or the
21 ICA violated the Act in connection with the September 14, 2008, fundraising event.

22 **IV. RECOMMENDATIONS**

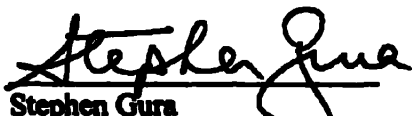
- 23 1. Dismiss the allegation that Steve Scheffler and the Iowa Christian Alliance
24 violated the Act in connection with the e-mail newsletter, dated
25 September 12, 2008;
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2. Find no reason to believe that the Iowa Christian Alliance violated 2 U.S.C. § 441d;
3. Find no reason to believe that Steve Scheffler and the Iowa Christian Alliance violated the Act in connection with the e-mail invitation, dated September 14, 2008;
4. Approve the attached Factual and Legal Analysis;
5. Approve the appropriate letters; and
6. Close the file.

Thomasenia P. Duncan
General Counsel

6/30/09
Date

BY: 
Stephen Gura
Deputy Associate General Counsel
for Enforcement


Peter G. Blumberg
Assistant General Counsel


Marianne Abely
Attorney